IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO (WCA)No. 168 of 2007

Date of decision:29th August, 2007.

Manager, Tibetan Staff Mess, Tibetan Secretariat

…..Appellant

Versus

Farman Ali and others …..Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant : Mr. Ajay Kumar, Advocate.

For the Respondent: Mr. Virender Rathore, Advocate.

Dev Darshan Sud,J.

This appeal has been filed by the Manager, Tibetan Staff Mess, Tibetan Secretariat against the award of the Commissioner under the Workmen's Compensation Act (hereinafter referred to as the Act), Dharamshala in case No. 4 of 2006, awarding compensation to the widowed mother of the deceased workmen.

Brief facts, as alleged are that deceased Nikku Din was working as a cook with the appellants. He died on 2.9.1997 during the course of his employment with the appellant. A sum of Rs. 5 lacs were claimed by the claimants for the death of Nikku Din.

The appellant was proceeded *ex parte* on 17.12.2002, which order was set aside by this court and the matter was taken up by the Commissioner for determination. The petition was resisted by the appellant on a number of grounds.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

Two primary grounds being (i); whether deceased Nikku Din died during the course of employment? And; (ii) whether the petitioners were dependent on the deceased workmen? were raised by the appellants for determination. The Commissioner, after recording evidence held in favour of the claimant, namely widowed mother of the deceased. The appellant has challenged the award on a number of grounds.

Three questions purporting to be substantial question of law as filed with the grounds of appeal are sought to be raised by way of the present appeal.

I have heard learned counsel for the parties and have gone through the record. First and second questions urged are common and not questions of law as urged. In any event the Commissioner while determining these issues has held that the deceased was employed by the respondents as a cook. The nature of duties as admitted by DW-1 were that the deceased was to prepare and serve food. He was also given accommodation in the Mess itself. Evidence clearly indicates that the nature of duties was that the deceased was on practically twenty four hours duty.

Before proceeding with the matter further, it would be worthwhile to remember that jurisdiction of this Court is circumscribed by the statutory limitations imposed under Section 30 of the Act, which reads:-

> "30……
>
> Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees"

In **Dwarka Arm Fatory, Bellary and Khaja Hussain R.(1998) 1 LLJ, 15** the High Court of Karnataka has held that the appeal under the Act cannot be compared with that under Section 96 of the Code of Civil Procedure. The Court held that the appeal under the Act can only be entertained and decided on a substantial question of law. The Division Bench of the High Court of Kerala in

Raveendran and Somavally (1996) 1 LLJ 325 has held that the question as to whether a workmen was employed by the employer at the time of the occurrence of the accident and whether the injury took place during the course of employment are all questions of fact for which no appeal would lie under Section 30 of the Act. It was held:-

> "9. The questions as to whether or not the workman was at the time of the accident employed by the employer and whether or not the accident resulting in injury took place during the course of employment are all questions of fact on which no appeal lies under Section 30 of the Act. It clearly restricts the right of appeal to substantial question of law. Where on a particular point, there is evidence for and against, and a finding is recorded by the Commissioner, on taking a particular view of the evidence, it cannot be questioned howsoever erroneous, as no question of law can be said to have arisen in such cases. Only in cases where the Commissioner has clearly misdirected himself on a question of law or a finding is recorded without any evidence whatsoever, or perverse finding is reached which no reasonable man would reach, it can be said that a question of law has arisen which no court may consider it to be a substantial one. In the instant case, the question as to whether the workman died in an accident which is arising out of and in the course of employment is supported by evidence, and so found by the Commissioner is purely a question of fact. There is no substantial question of law involved in the present appeal to be interfered with under Section 30 of the Act. We, therefore, find no reason to interfere with the said finding. The appeal is therefore dismissed in limine."

In these circumstances, the contentions raised by the learned counsel for the appellant that the injury did not arise during the course of employment cannot be entertained being a pure questions of fact. Even otherwise, from a reading of the evidence, as considered by the Commissioner, I do not find that there is any

perversity in arriving at the conclusion that the death occurred during the course of employment. Needless to add that the law now is quite well settled that the term 'arising out of and in the nature of employment' has received a liberal and wide interpretation. See: **The Calcutta Electric Supply Corporation Ltd. And Rampati Debi (1953) 2 LLJ 227.** None the less, as held by me, a consideration of the evidence on the record does not show any perversity of appreciation of evidence or of the conclusion arrived at by the Commissioner.

Learned counsel for the appellant submits that the Commissioner was not correct in holding that wages paid to the appellant would include the free meals supplied to the workman. This contention is to be rejected out rightly. The definition of wages under Section 2 (m) of the Act includes not only the actual sum paid but also any privilege or benefit which is capable of being estimated in money.

In **Sampuran Singh vs. Mukhtiar Singh (1992) 1 ACC 14**, the High Court of Punjab and Haryana has held that free meals supplied would constitute the element of wages paid to the workman.

In the totality of the facts and circumstances of the case, I do not find any question of law which can be entertain by this Court for adjudication in this appeal. This appeal is accordingly rejected with costs assessed at Rs. 4400/-.

29th August, 2007. **(Dev Darshan Sud),J**

(cm)